

§ 7B-1101.1. Parent's right to counsel; guardian ad litem.

(a) The parent has the right to counsel, and to appointed counsel in cases of indigency, unless the parent waives the right. The fees of appointed counsel shall be borne by the Office of Indigent Defense Services. When a petition is filed, unless the parent is already represented by counsel, the clerk shall appoint provisional counsel for each respondent parent named in the petition in accordance with rules adopted by the Office of Indigent Defense Services and shall indicate the appointment on the juvenile summons. At the first hearing after service upon the respondent parent, the court shall dismiss the provisional counsel if the respondent parent:

- (1) Does not appear at the hearing;
- (2) Does not qualify for court-appointed counsel;
- (3) Has retained counsel; or
- (4) Waives the right to counsel.

The court shall confirm the appointment of counsel if subdivisions (1) through (4) of this subsection are not applicable to the respondent parent. The court may reconsider a parent's eligibility and desire for appointed counsel at any stage of the proceeding.

(a1) A parent qualifying for appointed counsel may be permitted to proceed without the assistance of counsel only after the court examines the parent and makes findings of fact sufficient to show that the waiver is knowing and voluntary. This examination shall be reported as provided in G.S. 7B-806.

(b) In addition to the right to appointed counsel under subsection (a) of this section, a guardian ad litem shall be appointed in accordance with G.S. 1A-1, Rule 17, to represent any parent who is under the age of 18 years and who is not married or otherwise emancipated.

(c) On motion of any party or on the court's own motion, the court may appoint a guardian ad litem for a parent who is incompetent in accordance with G.S. 1A-1, Rule 17.

(d) The parent's counsel shall not be appointed to serve as the guardian ad litem and the guardian ad litem shall not act as the parent's attorney. Communications between the guardian ad litem appointed under this section and the parent and between the guardian ad litem and the parent's counsel shall be privileged and confidential to the same extent that communications between the parent and the parent's counsel are privileged and confidential.

(e) Repealed by Session Laws 2013-129, s. 32, effective October 1, 2013, and applicable to actions filed or pending on or after that date.

(f) The fees of a guardian ad litem appointed pursuant to this section shall be borne by the Office of Indigent Defense Services when the court finds that the respondent is indigent. In other cases, the fees of the court-appointed guardian ad litem shall be a proper charge against the respondent if the respondent does not secure private legal counsel. (2005-398, s. 15; 2009-311, s. 9; 2011-326, s. 12(b); 2012-194, s. 41; 2013-129, s. 32.)